

2024 NYPWA Winter Conference  
Questions for State Agency Counsel

OCFS

1. Can you provide a current chart of your Counsel's Office staffing, with contact information (names, titles, email address) broken down by responsibility?
2. Significant Litigation Summary: What are the significant litigation cases OCFS are involved with that may impact local social services districts?
3. APS- will OCFS be issuing any guidance to the LDSS's concerning the decision in Matter of Kimberly DD., 220 AD3d 1091 (3rd Dept., 2023) relative to the county responsible to serve as guardian? Relative to this issue, the Third Department wrote:

Finally, under the circumstances presented, we cannot say that Supreme Court abused its discretion in appointing Washington County as guardian. Nonetheless, in view of Saratoga County's status under Social Services Law § 62 as respondent's residence for purposes of medical assistance and public assistance or care, we conclude, in the exercise of our own discretion, that Saratoga County's Commissioner should serve as respondent's guardian (see Matter of Von Bulow, 63 NY2d 221, 224 [1984]). Under Social Services Law § 62 (5) (d), when, as here, a person who was admitted to a nursing home located in a "district other than the district in which he [or she] was then residing . . . is or becomes in need of medical assistance, the social services district from which he [or she] was admitted . . . shall be responsible for providing such medical assistance" (emphasis added). Here, Saratoga County openly acknowledges that it is respondent's residence district under Social Services Law § 62 and, in fact, has and continues to provide medical assistance to her. Saratoga County maintains, nonetheless, that its fiscal role does not make it the most appropriate entity to serve as guardian. The statute, however, also charges the residence district with providing "public assistance or care" (Social Services Law § 62 [5] [d]). Pertinent in that regard, under Social Services Law § 473, a resident social services district must also provide "protective services" to an individual in need, including services "arranging, when necessary, for . . . guardianship . . . either directly or through referral to another appropriate agency" (Social Services Law § 473 [1] [c]; see 18 NYCRR 457.1 [a]; [d] [7], [9]). Given this statutory mandate, we conclude that Saratoga County's Commissioner of Social [\*3]Services should serve as respondent's guardian.

While the decision gives some guidance in a case where the subject of the guardianship is placed in a nursing home, the Third Department did not say that Supreme Court abused its discretion in making its determination, so there may be other cases where the county in which the IP is placed is named as opposed to the county responsible for public assistance. There are also other situations where the subject of a guardianship is not placed in a nursing home, instead perhaps is a public assistance recipient in County A, but goes into a hospital in County B and becomes the subject of a guardianship petition in County B. Some definitive guidance on this issue would be helpful, as this has been a recurring issue over the years.

4. Do you have any advice relative to FCA 1034 and the ordering of those by courts even where there is no allegation of neglect or abuse in the home(s)? There is at least one case (*Corrigan v Orosco*, 84 AD3d 955 [2<sup>nd</sup> Dept., 2011]) that says that they are not to be ordered unless there is some indicia of abuse or maltreatment. Can OCFS have a dialogue with or communicate this issue to OCA? Given that a 1034 order must be reported to the SCR as a referral, 1034 orders in which there are no actual allegations or concerns about neglect or abuse waste both CPS and SCR resources.
5. What is OCFS's position relative to the release of the identity or information that might identify a CPS referral source, both for indicated and unfounded reports?

There are two sections of SSL §422 that speak to the issue of the release of the identity or other information about referral sources.

The last sentence of the second to last paragraph of SSL §422(4)(A) places some limitations on the disclosure of referral source information:

Nothing in this section shall be construed to permit any release, disclosure or identification of the names or identifying descriptions of persons who have reported suspected child abuse or maltreatment to the statewide central register or the agency, institution, organization, program or other entity where such persons are employed or the agency, institution, organization or program with which they are associated without such persons' written permission except to persons, officials, and agencies enumerated in subparagraphs (e), (f), (h), (j), (l), (m) and (v) of this paragraph.

The exceptions here are (e) a court; (f) a grand jury; (h); a *bona fide* research project; (j) the Justice Center; (l) law enforcement; (m) New York City

Department of Investigation; and (v) the State and New York City Comptrollers.

Second, SSL §422(7) says that:

7. At any time, a subject of a report and other persons named in the report may receive, upon request, a copy of all information contained in the central register; provided, however, that the commissioner is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation or the agency, institution, organization, program or other entity where such person is employed or with which he is associated, which he reasonably finds will be detrimental to the safety or interests of such person.

The term “commissioner,” as used in this section, would seem to refer to the Commissioner of OCFS, as the SCR is “owned” by OCFS, so I am not sure if this section of the law would apply to the local districts or not. This section was relied upon by ACS in the *Matter of Michael Y.* 212 AD3d 494 (1<sup>st</sup> Dept., 2023), which was discussed earlier in the confidentiality CLE.

SSL §422(5), which is the section of the statute that pertains to unfounded reports, does not address the release of information concerning the referral source.

Definitive guidance on this issue would be helpful, both to insure that an LDSS does not make an improper disclosure in the first place, but also to educate the courts.

6. Juvenile Detention: What are the alternatives if a detention bed is unavailable on an AO or JD remand. We aren't allowed to put Youth/Children in jail, and I don't think either the Sheriff or OCFS would be happy with a Deputy sitting on him in an interview room, but I am finding more and more that beds aren't available. I had one situation where I had a kid we had to cut loose after the Sheriff stayed with him in the Courthouse all day, and another where we were scrambling for a bed, even though one detention facility had a number beds available but wouldn't take anyone due to staffing. It is becoming an increasingly major issue for upstate counties.

7. Local DSS Employee Retention and Pay Equity:

- Current State funding of child welfare makes it difficult for more impoverished areas of the State to retain skilled staff. Is OCFS exploring child welfare funding reform to enhance personnel funding reimbursement for more impoverished social services districts?
  - Pay Equity with State Counterparts: In fulfilling State mandates, local DSS staff are more public facing than their State counterparts. However, current State funding exacerbates pay equity and employee retention as more impoverished areas do not have the financial resources to competitively fund staffing to fulfill State mandated requirements. Are there any State initiatives to reform local social services funding, to study compensation equity between the more public facing DSS workers and their less public facing state counterparts, and appropriate State funding to achieve compensation equity, especially for more impoverished areas of the State?
  - Quality Legal Representation: OCFS was involved in a webinar concerning providing quality legal representation for parents, when cases are registered by the SCR and forwarded to local CPS for investigation. This initiative is supported by State grant appropriations. What enhanced State funding will be available to local DSS' to assure quality legal representation for CPS?
8. Connections Reform: Why does OCFS still release directives and other policy communications that are ineffectively not built into Connections? Does OCFS have a technology plan to implement its child welfare policy changes through revisions to its Connections system, to enable uniform user- friendly statewide compliance?
  9. Family Treatment Courts: Does OCFS track data concerning Family Treatment Courts (FTC's), that Family Courts have implemented with local social services districts throughout NY State? If so, what metrics does OCFS track?
  10. *Families First* Audit: What are the Federal audit prospects for Qualified Individual Assessments and other Families First compliance requirements?
  11. Family Court "Court Improvement Project": What is the status of OCFS' involvement with this initiative?

12. In the context of an emergency removal, aside from notification information which the local district would provide to the Indian tribe of the parent/child, is the LDSS required/permitted to release to the tribe any other CPS information pertaining to the current investigation or prior CPS history? This question has to do with providing CPS information to the tribe itself as opposed to the qualified expert who is appointed by the tribe to opine on placement issues.

Joint OCFS/OTDA question:

DSS Building Prohibitions on Video/Audio Recording: Some LDSS's have had "first amendment" auditors coming into county buildings to video record. To protect DSS client confidentiality and privacy, in response, many LDSS's have implemented a no audio or video policy in DSS buildings. (Note- this issue will also be discussed during the Confidentiality Update CLE)

- Does OCFS have any video and/or audio recording policy guidance for DSS offices?
- Does OTDA have any video and/or audio recording policy guidance for DSS offices?

OTDA

1. Please provide a current chart of your Counsel's Offices staffing, with contact information (names, titles, email address) broken down by responsibility?
2. Significant Litigation Summary: What are the significant litigation cases OTDA are involved with that may impact local social services districts?
3. Child support- Can you discuss and issue guidance regarding LDSS/County attorneys being mandated to provide reciprocal enforcement services when an SCU violation petition gets transferred to their county. Some transferred petitions are not being prosecuted in the transferee county because that LDSS/County Attorney won't prosecute unless DSS arrears are involved or the CP has signed a right to recovery agreement. As a result, the attorney from the original county must not only cover cases in their own county (including transfers to their county), but also then have to appear virtually in other counties where there are

transfers from his/her county. Is there any existing guidance that you can direct us to on this issue, and if there isn't, can some be issued to remedy this issue?

4. Can you address the migrant/unhoused individuals and shelter regulations with respect to motels? This is a cross-over issue with Part 900 of the Title 18 and the Public Health Law and its Title 10 regulations. We have learned that Erie County has received a citation for housing overflow usage for more than 30 days in a motel leading to a violation as an unregistered shelter. Other counties are seeing a sharp uptick in individuals and (mostly) families seeking emergency shelter, post-COVID eviction moratorium.
5. Can you address the issue of disclosure of TA information to law enforcement for purposes other than those related to the administration of public assistance (the "fleeing felon" exception)?

Between SSL §136, and the various Federal statutes and regulations, there are a variety of contradictory rules on disclosing public assistance applicant/recipient information to law enforcement. While disclosure to law enforcement for welfare fraud investigation/prosecution is pretty straight forward, there are some odd differences for disclosure for other purposes. Some examples are:

#### SSL §136

5. A social services official shall disclose to a federal, state or local law enforcement officer, upon request of the officer, **the current address of any recipient of family assistance, or safety net assistance** if the duties of the officer include the location or apprehension of the recipient and the officer furnishes the social services official with the name of the recipient and notifies the agency that **such recipient is fleeing to avoid prosecution, custody or confinement after conviction, under the laws of the place from which the recipient is fleeing, for a crime or an attempt to commit a crime which is a felony under the laws of the place from which the recipient is fleeing, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of that state, or is violating a condition of probation or parole imposed under a federal or state law or has information that is necessary for the officer to conduct his or her official duties.** In a request for disclosure pursuant to this subdivision, such law enforcement officer shall endeavor to include identifying information to help ensure that the social services official discloses only the address of the person sought and not the address of a person with the same or similar name.

45 CFR. §205.50 (Safeguarding information for the financial assistance programs):

(a) State plan requirements. A State plan for financial assistance under title IV–A of the Social Security Act, must provide that:

(1) Pursuant to State statute which imposes legal sanctions:

(v) The State or local agency responsible for the administration of the State plan has authority to disclose the current address of a recipient to a State or local law enforcement officer at his or her request. Such information is disclosed only to law enforcement officers who provide the name and Social Security number of the recipient and satisfactorily demonstrate that:

(A) The recipient is a fugitive felon (as defined by the State);

(B) The location or apprehension of such felon is within the law officer's official duties; and

(C) The request is made in the proper exercise of those duties.

Note here that the “fleeing felon” confidentiality exception differs from the Social Services Law §136(5) as it does not include “...or has information that is necessary for the officer to conduct his or her official duties.”

#### SNAP

18 NYCRR 387.2(j)- the New York State regulation related to the confidentiality of SNAP records says that the local district must:

(j) restrict the use or disclosure of information obtained from applicant households to persons directly connected with the administration and enforcement of the food stamp program, other Federal assistance programs, and federally assisted State programs providing assistance on a means-tested basis to low-income households. Notwithstanding any other provision of law, the address, social security number, and if available, photograph of any member of a household must be made available, on request, to any Federal, State, or local law enforcement officer if the officer furnishes the social services district with the name of the member and notifies the social services district that:

(1) the member:

(i) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime or an attempt to commit a crime, that, under the law of the place the member is fleeing, is a felony or, in the case of the State of New Jersey, a high misdemeanor;

(ii) is violating a condition or probation or parole imposed under Federal or State law; or

(iii) has information that is necessary for the officer to conduct an official duty related to subparagraph (i) of this paragraph;

(2) locating or apprehending the member is an official duty; and

(3) the request is being made in the proper exercise of an official duty;

7 USC 2020(e) (Requisites of State plan of operation)

(E) notwithstanding any other provision of law, the address, social security number, and, if available, photograph of any member of a household shall be made available, on request, to any Federal, State, or local law enforcement officer if the officer furnishes the State agency with the name of the member and notifies the agency that--

(i) the member-

(I) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) that, under the law of the place the member is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under Federal or State law; or

(II) has information that is necessary for the officer to conduct an official duty related to subclause (I);

(ii) locating or apprehending the member is an official duty; and

(iii) the request is being made in the proper exercise of an official duty;

Federal regulations found in 7 CFR 272.1(c) reiterate the statute, but note the differences regarding fleeing felons. Per the regulation, SNAP recipient information may be disclosed only to:

7. Law enforcement officials, upon written request, to request the address, social security number and photograph of a household member who is a fleeing felon.

6. Similar to the last question, but related to a specific situation, a person presented before an LDSS temporary assistance unit looking for homeless placement. He was placed. TA subsequently learned through routine investigation that he is a non-compliant registered sex offender from the State of Connecticut. There are



no conditions of probation. Can DCFS Special Investigations report it to either local law enforcement?